

UNITED STATES DISTRICT COURT  
DISTRICT OF MINNESOTA  
Civil No. 05-1184 (DSD/AJB)

Security American Financial  
Enterprises, Inc., a Minnesota  
corporation,

Plaintiff,

v.

**ORDER**

DenVision, LLC, a South Dakota  
limited liability company, and  
Richard A. Cutler, a resident  
of South Dakota,

Defendants.

Allen D. Barnard, Esq., Edward P. Sheu, Esq. and Best &  
Flanagan, 225 South Sixth Street, Suite 4000,  
Minneapolis, MN 55402, counsel for plaintiff.

Michael G. Taylor, Esq., Douglas R. Boettge, Esq., Monica  
L. Davies, Esq. and Leonard, Street & Deinard, 150 South  
Fifth Street, Suite 2300, Minneapolis, MN 55402, counsel  
for defendants.

This matter came on for hearing on June 27, 2005, upon  
plaintiff's motion for a temporary restraining order. Plaintiff  
and defendants appeared through counsel. Based upon a review of  
the file, record and proceedings herein, and the arguments of  
counsel at the hearing, plaintiff's motion is denied.

Plaintiff Security American Financial Enterprises, Inc.  
("SAFE"), sells group dental and vision insurance policies. As of  
early June of 2005, the 2,161,958 shares of SAFE common stock were

held by 190 shareholders including defendant DenVision, LLC.<sup>1</sup> On June 9, 2005, DenVision made an offer to purchase all outstanding shares of SAFE for \$7.37 per share. The tender offer expires on July 20, 2005. It is contingent upon, among other things, the tender of sufficient shares to give DenVision at least fifty-one percent ownership of SAFE. The offer also stated that if all conditions are satisfied, DenVision would purchase the shares and immediately complete a back-end merger with SAFE.

On June 16, 2005, SAFE filed this action, alleging that DenVision's tender offer violates Minnesota Statutes §§ 80A.01 and 80A.03, the Minnesota Business Combination Act ("BCA") and the Exchange Act, 15 U.S.C. § 78n(e). On June 22, 2005, SAFE moved for a temporary restraining order to enjoin DenVision from continuing its tender offer. SAFE primarily argued that the BCA prohibits DenVision from completing a back-end merger until at least 2008, contrary to the plans set forth in the tender offer. On June 24, 2005, DenVision issued an amended tender offer that acknowledges the restriction on back-end mergers, emphasizes the shareholders' right to withdraw their tender before the offer expires and sets forth greater detail on DenVision's financing and plans for SAFE.

Despite the amended offer, SAFE maintains its motion for a temporary restraining order, arguing that the offer violates

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<sup>1</sup> Defendant Richard A. Cutler and others began acquiring SAFE stock in 2003. In April of 2005, they organized DenVision and transferred their SAFE shares to it.

various provisions of the Exchange Act and contains insufficient or misleading information. The court finds, however, that SAFE has failed to show a likelihood of success on the merits of its claims. Furthermore, SAFE has failed to demonstrate non-speculative irreparable harm, that the balance of harms weighs in its favor or that the public interest favors the issuance of an injunction. See Dataphase Sys., Inc. v. C.L. Sys., Inc., 640 F.2d 109, 114 (8th Cir. 1981) (en banc). Therefore, the court finds that a temporary restraining order is unwarranted.

Accordingly, **IT IS HEREBY ORDERED** that plaintiff's motion for a temporary restraining order [Doc. No. 2] is denied.

Dated: July 1, 2005

s/David S. Doty  
David S. Doty, Judge  
United States District Court